

program conforms to the requirements of these guidelines. If the Commission so finds, it will issue a determination of no reasonable cause and, where appropriate, will state that the determination constitutes a written interpretation or opinion of the Commission under section 713(b)(1). This interpretation may be relied upon by the respondent and asserted as a defense in the event that new charges involving similar facts and circumstances are thereafter filed against the respondent, which are based on actions taken pursuant to the affirmative action plan or program. If the Commission does not so find, it will proceed with the investigation in the usual manner.

(b) *Reliance on these guidelines.* If a respondent asserts that the action taken was pursuant to and in accordance with a plan or program which was adopted or implemented in good faith, in conformity with, and in reliance upon these Guidelines, and the self analysis and plan are in writing, the Commission will determine whether such assertion is true. If the Commission so finds, it will so state in the determination of no reasonable cause and will advise the respondent that:

(1) The Commission has found that the respondent is entitled to the protection of section 713(b)(1) of title VII; and

(2) That the determination is itself an additional written interpretation or opinion of the Commission pursuant to section 713(b)(1).

**§ 1608.11 Limitations on the application of these guidelines.**

(a) *No determination of adequacy of plan or program.* These Guidelines are applicable only with respect to the circumstances described in § 1608.1(d), of this part. They do not apply to, and the section 713(b)(1) defense is not available for the purpose of, determining the adequacy of an affirmative action plan or program to eliminate discrimination. Whether an employer who takes such affirmative action has done enough to remedy such discrimination will remain a question of fact in each case.

(b) *Guidelines inapplicable in absence of affirmative action.* Where an affirmative action plan or program does not exist,

or where the plan or program is not the basis of the action complained of, these Guidelines are inapplicable.

(c) *Currency of plan or program.* Under section 713(b)(1), persons may rely on the plan or program only during the time when it is current. Currency is related to such factors as progress in correcting the conditions disclosed by the self analysis. The currency of the plan or program is a question of fact to be determined on a case by case basis. Programs developed under Executive Order 11246, as amended, will be deemed current in accordance with Department of Labor regulations at 41 CFR chapter 60, or successor orders or regulations.

**§ 1608.12 Equal employment opportunity plans adopted pursuant to section 717 of title VII.**

If adherence to an Equal Employment Opportunity Plan, adopted pursuant to section 717 of title VII, and approved by an appropriate official of the U.S. Civil Service Commission, is the basis of a complaint filed under title VII, or is alleged to be the justification for an action under title VII, these Guidelines will apply in a manner similar to that set forth in § 1608.5. The Commission will issue regulations setting forth the procedure for processing such complaints.

**PART 1610—AVAILABILITY OF RECORDS**

**Subpart A—Production or Disclosure Under 5 U.S.C. 552**

Sec.

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1610.19 Predisclosure notification procedures for confidential commercial information.

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### Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

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1610.36 Procedure in the event of an adverse ruling.

AUTHORITY: 42 U.S.C. 2000e-12(a), 5 U.S.C. 552, as amended by Pub. L. 93-502 and Pub. L. 99-570; for §1610.15, nonsearch or copy portions are issued under 31 U.S.C. 9701.

### Subpart A—Production or Disclosure Under 5 U.S.C. 552

#### § 1610.1 Definitions.

(a) *Title VII* refers to title VII of the Civil Rights Act of 1964, as amended by Public Law 92-261, 42 U.S.C. (Supp. II) 2000e *et seq.*

(b) *Commission* refers to the Equal Employment Opportunity Commission.

(c) *Freedom of Information Act* refers to 5 U.S.C. 552 (Pub. L. 90-23 as amended by Pub. L. 93-502).

(d) *Commercial use* refers to a use or purpose by the requester of information for the information that furthers the requester's commercial, trade or profit interests. Requests for charge files by profit-making entities, other than educational and noncommercial scientific institutions and representatives of the new media, shall be considered for commercial use unless the request demonstrates a noncommercial use.

[40 FR 8171, Feb. 26, 1975, as amended at 52 FR 13830, Apr. 27, 1987]

#### § 1610.2 Statutory requirements.

5 U.S.C. 552(a)(3) requires each Agency, upon request for reasonably described records made in accordance with published rules stating the time, place, fees, if any, and procedure to be followed, to make such records promptly available to any person. 5 U.S.C. 552(b) exempts specified classes of records from the public access require-

ments of 5 U.S.C. 552(a) and permits them to be withheld.

[40 FR 8171, Feb. 26, 1975]

#### § 1610.3 Purpose and scope.

This subpart contains the regulations of the Equal Employment Opportunity Commission implementing 5 U.S.C. 552. The regulations of this subpart provide information concerning the procedures by which records may be obtained from all organizational units within the Commission. Official records of the Commission made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public only as prescribed by this subpart. Officers and employees of the Commission may continue to furnish to the public, informally and without compliance with the procedures prescribed herein, information and records which prior to the enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties. To the extent that it is not prohibited by other laws, the Commission also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

#### § 1610.4 Public reference facilities and current index.

(a) The Commission will maintain in a public reading area located in the Commission's library at 1801 L Street NW., Washington DC 20507, the materials which are required by 5 U.S.C. 552(a)(2) and 552(a)(5) to be made available for public inspection and copying. The Commission will maintain and make available for public inspection and copying in this public reading area a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required to be indexed by 5 U.S.C. 552(a)(2). The Commission in its discretion may, however, include precedential materials issued, adopted, or promulgated prior to July 4, 1967. The Commission will also maintain on file in this public reading area all material published by the Commission in the FEDERAL REGISTER and currently in effect.

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(b) Each of the Commission's field offices listed in paragraph (c) of this section, including the District Offices, the Washington Field Office, the Area Offices and the Local Offices, shall maintain and make available for public inspection and copying a copy of :

(1) The Commission's notices and regulatory amendments which are not yet or have never been published in the Code of Federal Regulations,

(2) The Commission's annual reports,

(3) The Commission's Compliance Manual,

(4) Blank forms relating to the Commission's procedures as they affect the public,

(5) The Commission's Orders (agency directives), and

(6) "CCH Equal Employment Opportunity Commission Decisions" (1973) and Employment Practices Guide (vol. 2), published by Commerce Clearing House, Inc.

(c) The Commission's field offices are:

Albuquerque Area Office (Phoenix District), Western Bank Building, suite 1105, 505 Marquette NW., Albuquerque, NM 87102-2189

Atlanta District Office, Citizens Trust Bank Building, suite 1100, 75 Piedmont Avenue NE., Atlanta, GA 30335

Baltimore District Office, 111 Market Place, suite 4000, Baltimore, MD 21202

Birmingham District Office, 1900 3rd Avenue, North, suite 101, Birmingham, AL 35203-2397

Boston Area Office (New York District) 1 Congress Street, suite 100, Boston, MA 02114

Buffalo Local Office (New York District), 28 Church Street, room 310, Buffalo, NY 14202

Charlotte District Office, 5500 Central Avenue, Charlotte, NC 28212

Chicago District Office, Federal Building, room 930A, 536 South Clark Street, Chicago, IL 60605

Cincinnati Area Office (Cleveland District), 550 Main Street, room 7015, Cincinnati, OH 45202

Cleveland District Office, 1375 Euclid Avenue, room 600, Cleveland, OH 44115

Dallas District Office, 8303 Elmbrook Drive, Dallas, TX 75247

Denver District Office, 1845 Sherman Street, 2nd Floor, Denver, CO 80203

Detroit District Office, 477 Michigan Avenue, room 1540, Detroit, MI 48226

El Paso Area Office (San Antonio District), The Commons, Building C, suite 100, 4171 North Mesa Street, El Paso, TX 79902

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Fresno Local Office (San Francisco District), 1313 P Street, suite 103, Fresno, CA 93721

Greensboro Local Office (Charlotte District), 324 West Market, room B-27, P.O. Box 3363, Greensboro, NC 27402

Greenville Local Office (Charlotte District), 300 East Washington Street, suite B41, Greenville, SC 29601

Honolulu Local Office (San Francisco District), 677 Ala Moana Boulevard, suite 404, P.O. Box 50082, Honolulu, HI 96813

Houston District Office, 1919 Smith Street, 7th Floor, Houston, TX 77002

Indianapolis District Office, 46 East Ohio Street, room 456, Indianapolis, IN 46204

Jackson Area Office (Birmingham District), 207 West Amite Street, Jackson, MS 39201

Kansas City Area Office (St. Louis District), 911 Walnut Street, 10th Floor, Kansas City, MO 64106

Little Rock Area Office (Memphis District), 320 West Capitol Avenue, suite 621, Little Rock, AR 72201

Los Angeles District Office, 3660 Wilshire Boulevard, 5th Floor, Los Angeles, CA 90010

Louisville Area Office (Indianapolis District), 600 Martin Luther King Jr. Place, suite 272, Louisville, KY 40202

Memphis District Office, 1407 Union Avenue, suite 621, Memphis, TN 38104

Miami District Office, 1 Northeast First Street, 6th Floor, Miami, FL 33132

Milwaukee District Office, 310 West Wisconsin Avenue, suite 800, Milwaukee, WI 53203

Minneapolis Local Office (Milwaukee District), 220 Second Street South, room 108, Minneapolis, MN 55401-2141

Nashville Area Office (Memphis District), 50 Vantage Way, suite 202, Nashville, TN 37228

Newark Area Office (Philadelphia District), 60 Park Place, room 301, Newark, NJ 07102

New Orleans District Office, 701 Loyola Avenue, suite 600, New Orleans, LA 70113

New York District Office, 90 Church Street, room 1501, New York, NY 10007

Norfolk Area Office (Baltimore District), Systems Management of America (SMA) Building, 252 Monticello Avenue, 1st Floor, Norfolk, VA 23510

Oakland Local Office (San Francisco District), 1333 Broadway, room 430, Oakland, CA 94612

Oklahoma Area Office (Dallas District), 531 Couch Drive, Oklahoma City, OK 73102

Philadelphia District Office, 1421 Cherry Street, 10th Floor, Philadelphia, PA 19102

Phoenix District Office, 4520 North Central Avenue, suite 300, Phoenix, AZ 85012-1848

Pittsburgh Area Office (Philadelphia District), 1000 Liberty Avenue, room 2038-A, Pittsburgh, PA 15222

Raleigh Area Office (Charlotte District), 1309 Annapolis Drive, Raleigh, NC 27608-2129

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Richmond Area Office (Baltimore District), 3600 West Broad Street, room 229, Richmond, VA 23230

San Antonio District Office, 5410 Fredericksburg Road, suite 200, San Antonio, TX 78229

San Diego Local Office (Los Angeles District), 880 Front Street, room 4S-21, San Diego, CA 92188

San Francisco District Office, 901 Market Street, suite 500, San Francisco, CA 94103,

San Jose Local Office (San Francisco District), 96 North 3rd Street, San Jose, CA 95112,

Savannah Local Office, 10 Whitaker Street, suite B, Savannah, GA 31401,

Seattle District Office, 2815 Second Avenue, suite 500, Seattle, WA 98121,

St. Louis District Office, 625 North Euclid Street, 5th Floor, St. Louis, MO 63018,

Tampa Area Office (Miami District), 501 East Polk Street, 10th Floor, Tampa, FL 33602,

Washington Field Office, 1400 L Street NW., suite 200, Washington, DC 20005.

[40 FR 8171, Feb. 26, 1975, as amended at 45 FR 40603, June 16, 1980; 49 FR 13024, Apr. 2, 1984; 54 FR 32061, Aug. 4, 1989; 56 FR 29578, June 28, 1991]

### § 1610.5 Request for records.

(a) A written request for inspection or copying of a record of the Commission may be presented in person or by mail to the Commission employee designated in § 1610.7. Requests must be presented during business hours on any workday.

(b) Each request must contain information which reasonably describes the records sought and, when known, should contain a name, date, subject matter and location for the record requested in order to permit the record to be promptly located.

(c) Where a request is not considered reasonably descriptive or requires the production of voluminous records, or necessitates the utilization of a considerable number of work hours to the detriment of the business of the Commission, the Commission may require the person making the request or such person's agent to confer with a Commission representative in order to attempt to verify the scope of the request and; if possible, narrow such request.

[40 FR 8171, Feb. 26, 1975, as amended at 56 FR 29578, June 28, 1991]

### § 1610.6 Records of other agencies.

Requests for records that originated in another Agency and are in the custody of the Commission will be coordinated in appropriate circumstances with that Agency and the person submitting the request shall be so notified. The decision made by that Agency with respect to such records will be honored by the Commission.

[45 FR 40604, June 16, 1980]

### § 1610.7 Where to make request; form.

(a) Requests for the following types of records shall be submitted to the regional attorney for the pertinent district, area or local office, at the district office address listed in § 1610.4(c) or, in the case of the Washington Field Office, shall be submitted to the regional attorney in the Baltimore District Office at the address listed in § 1610.4(c):

(1) Information about current or former employees of a field office;

(2) Existing non-confidential statistical data related to the case processing of a field office;

(3) Agreements between the Commission and State or local fair employment agencies operating within the jurisdiction of a field office; or

(4) Materials in field office investigative files related to charges under: Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act (29 U.S.C. 206(d)); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*); or, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(b) A request for any record which does not fall within the ambit of subparagraph (a) of this section, or a request for any record the location of which is unknown to the person making the request, shall be submitted in writing to the Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW., Washington DC 20507.

(c) A request must be clearly and prominently defined as a request for information under the Freedom of Information Act. If submitted by mail, or otherwise submitted under any cover, the envelope or other cover must be similarly identified.

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(d) When a request is one which by nature should properly be directed to the Legal Counsel, or a regional attorney, such request shall not be deemed to have been received by the Commission until the time it is actually received by the appropriate official.

(e) Any Commission official who receives a written Freedom of Information request shall promptly forward it to the appropriate official specified in paragraph (a) or (b) of this section. Any Commission official who receives an oral request under the Freedom of Information Act shall inform the other person making the request that it must be in writing and also inform such person of the provisions of this subpart.

[45 FR 40604, June 16, 1980, as amended at 47 FR 46275, Oct. 18, 1982; 52 FR 4902, Feb. 18, 1987; 54 FR 32062, Aug. 4, 1989; 56 FR 29578, June 28, 1991]

### § 1610.8 Authority to determine.

The Legal Counsel's designee, or a regional attorney, when receiving a request pursuant to these regulations, shall grant or deny each such request. The decision of the Legal Counsel's designee or appropriate regional attorney shall be final, subject only to administrative review as provided in § 1610.11 of this subpart.

[45 FR 40604, June 16, 1980, as amended at 47 FR 46275, Oct. 18, 1982; 49 FR 13025, Apr. 2, 1984; 52 FR 4902, Feb. 18, 1987; 56 FR 29578, 29579, June 28, 1991]

### § 1610.9 Prompt response.

(a) The Legal Counsel's designee, or regional attorney shall either grant or deny a request for records within 10 working days after receipt of the request unless additional time is required for one of the following reasons:

(1) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) It is necessary to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) If it is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more compo-

nents of the agency having substantial subject-matter interest therein.

(b) When additional time is required for one of the reasons stated in paragraph (a) of this section the Legal Counsel's designee, or regional attorney, shall acknowledge receipt of the request within the 10 day period and include a brief notation of the reason for the delay and an indication of the date on which it is expected that a determination as to disclosure will be forthcoming.

[45 FR 40604, June 16, 1980, as amended at 47 FR 46275, Oct. 18, 1982; 52 FR 4902, Feb. 18, 1987; 56 FR 29578, 29579, June 28, 1991]

### § 1610.10 Responses: form and content.

(a) Once a requested record is identified and available, the requester will be notified of when and where the record will be made available and the cost assessed for processing the request. Fees for processing requests will be determined in accordance with the schedule set forth in § 1610.15. Checks shall be made payable to the Treasurer of the United States.

(b) A reply denying a written request for a record shall be in writing, signed by the Legal Counsel's designee, or the appropriate regional attorney, and shall include:

(1) His or her name and title;

(2) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed under § 1610.9(a), and that the denial will be reconsidered as soon as the search or examination is complete; and

(3) A statement that the denial may be appealed to the Legal Counsel within 30 days of receipt of the denial or partial denial.

(c) If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the person making the request shall be so notified.

[40 FR 8171, Feb. 26, 1975, as amended at 52 FR 4902, Feb. 18, 1987; 56 FR 29579, June 28, 1991]

**§ 1610.11 Appeals to the Legal Counsel from initial denials.**

(a) When the Legal Counsel's designee, or an appropriate regional attorney, has denied a request for records in whole or in part, the person making the request may appeal within 30 days of its receipt. The appeal must be in writing addressed to the Legal Counsel or designee, Equal Employment Opportunity Commission, 1801 L Street NW., Washington DC 20507, and clearly labeled as a Freedom of Information Act appeal. Any appeal of a denial in whole or part by a Regional Attorney, must include a copy of the Regional Attorney's determination.

(b) The Legal Counsel or designee shall act upon the appeal within 20 working days of its receipt, and more rapidly if practicable. If the decision is in favor of the person making the request, the decision shall order records promptly made available to the person making the request. The Legal Counsel or designee, may extend the 20 day period in which to render an appeal for that period of time which could have been claimed and consumed by the Legal Counsel's designee, or regional attorney under §1610.9 but which was either not claimed or consumed in making the initial determination.

(c) The Legal Counsel's decision shall be in writing and signed by the Legal Counsel or designee. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation of how the exemption applied to the records withheld and the reasons for asserting it, if different from that described by the Legal Counsel's designee, or regional attorney under §1610.10, and that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in the district in which the person resides or has his principal place of business, in the district where the records reside, or in the District of Columbia.

(d) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Legal Counsel or designee.

(e) On appeal, the Legal Counsel or designee may reduce any fees previously assessed.

(f) In the event that the Commission terminates its proceedings on a charge after the regional attorney denies a request for the charge file but during consideration of the requester's appeal from that denial, the request may be remanded to the appropriate Regional Attorney for redetermination. The requester retains a right to appeal to the Legal Counsel from the decision on remand.

[49 FR 48040, Dec. 10, 1984, as amended at 52 FR 4902, Feb. 18, 1987; 54 FR 32062, Aug. 4, 1989; 56 FR 29579, June 28, 1991]

**§ 1610.13 Maintenance of files.**

(a) The Legal Counsel or designee, and regional attorneys, shall maintain files containing all material required to be retained by or furnished to them under this subpart. The material shall be filed by individual request indexed according to the exemptions asserted, and, to the extent feasible, indexed according to the type of records requested.

(b) The Legal Counsel or designee, shall also maintain a file open to the public, which shall contain copies of all grants or denials of appeals by the Commission. The material shall be indexed as stated in paragraph (a) of this section.

[45 FR 40605, June 16, 1980, as amended at 47 FR 46275, Oct. 18, 1982; 52 FR 4092, Feb. 18, 1987; 56 FR 29578, June 28, 1991]

**§ 1610.14 Waiver of user charges.**

(a) Except as provided in paragraph (b) of this section the Legal Counsel or designee and regional attorneys shall assess fees where applicable in accordance with §1610.15 for search, review and duplication of records requested. They shall also have authority to furnish documents without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(b) District directors, the Washington Field Office Director, area directors, and the librarian are hereby authorized to collect fees where applicable in accordance with §1610.15 for duplication

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of records which are to be made available for public inspection and copying in the district or area office, or in the headquarters library in accordance with § 1610.4(b). District directors, the Washington Field Office Director, area directors, and the librarian are hereby authorized to duplicate such records without charge, or at a reduced charge in accordance with the criteria of paragraph (a) of this section.

[52 FR 13830, Apr. 27, 1987, as amended at 54 FR 32062, Aug. 4, 1989; 56 FR 29578, June 28, 1991]

### **§ 1610.15 Schedule of fees and method of payment for services rendered.**

(a) Fees shall be assessed in accordance with the fee schedule set forth in paragraph (c) of this section as follows:

(1) When records are requested for commercial use, the Commission shall charge the full amount of its direct costs for document search, review and duplication. The Commission shall not charge for review at the administrative appeal level of an exemption already applied.

(2) When records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, or a representative of the news media, the Commission shall charge the direct costs of document duplication after the first 100 pages. The first 100 pages of duplication under paragraph (a)(2) shall be provided without charge.

(3) For all other record requests not falling under paragraph (a) (1) or (2) of this section, the Commission shall charge the direct costs for document search time after the first two hours and the direct costs for document duplication after the first 100 pages. The first two hours of search time and the first 100 pages of duplication under paragraph (a)(3) shall be provided without charge.

(b) When the Commission reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Commission shall aggregate any such requests and charge accordingly.

(c) Except as otherwise provided, the following specific fees for direct costs

shall be applicable with respect to services rendered to members of the public under this subpart:

(1) For actual search and review time by clerical personnel—at the rate of \$7.00 per hour.

(2) For actual search and review time by professional personnel—at the rate of \$17.00 per hour.

(3) For copies made by photocopying machine—\$.15 per page (maximum of 10 copies).

(4) For attestation of such record as a true copy—\$.75 per document.

(5) For certification of each record as a true copy, under the seal of the agency—\$1.00.

(6) For each signed statement of negative result of search for record—\$1.00.

(7) All other direct costs of search, review, duplication or delivery (other than normal mail), including computer search time, runs and operator salary shall be charged to the requester as appropriate in the same amount as incurred by the agency.

(d) The Commission shall not charge a fee if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

(e) The Commission shall charge interest at the rate prescribed in 31 U.S.C. 3717, accruing from the date of billing, to those requesters who fail to pay fees charged beginning on the 31st day following the day on which the billing was sent.

(f) While the fees charged for search and copying will in no event exceed those specified in paragraph (c) of this section, the Commission reserves the right to limit the number of copies that will be provided of any document or to require that special arrangements for copying be made in the case of records or requests presenting unusual problems of reproduction or handling.

[52 FR 13830, Apr. 27, 1987]

### **§ 1610.16 Payment of fees.**

(a) Unless a person making a request under the Freedom of Information Act states that he or she will bear all assessed fees levied by the Commission in searching for and, where applicable, reproducing requested data, said person will be held liable for assessed fees not to exceed \$25.00. A request which the Commission expects to exceed \$25.00

and which does not state acceptance of responsibility for all assessed fees will not be deemed to have been received until the person making the request is promptly advised of the anticipated fees and agrees to bear them.

(b) A search fee will be assessable notwithstanding that no records responsive to the request or that no records not exempt from disclosure are found.

(c) The Commission shall require payment in full prior to the commencement or continuation of work on a request if:

(1) It estimates or determines that the allowable charges will exceed \$250, unless the requester has a history of prompt payment of FOIA fees, in which case the Commission may obtain satisfactory assurance of prompt payment; or

(2) The requester has previously failed to pay fees within 30 days of the date of billing.

[40 FR 8171, Feb. 26, 1975, as amended at 52 FR 13830, Apr. 27, 1987]

#### **§ 1610.17 Exemptions.**

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence, and matters involving personal privacy.

(b) Section 706(b) of title VII provides that the Commission shall not make public charges which have been filed. It also provides that (subsequent to the filing of a charge, an investigation, and a finding that there is reasonable cause to believe that the charge is true) nothing said or done during and as a part of the Commission's endeavors to eliminate any alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion may be made public by the Commission without the written consent of the parties concerned; nor may it be used as evidence in a subsequent proceeding. Any officer or employee of the Commission who shall make public

in any manner whatever any information in violation of section 706(b) shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than 1 year.

(c) Section 709 of title VII authorizes the Commission to conduct investigations of charges filed under section 706, engage in cooperative efforts with State and local agencies charged with the administration of State or local fair employment practices laws, and issue regulations concerning reports and record-keeping. Section (e) of section 709 provides that it shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under section 709 prior to the institution of any proceeding under the act involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of section 709(e) shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than 1 year.

(d) Special disclosure rules apply to the case files for charging parties, aggrieved persons on whose behalf a charge has been filed, and entities against whom charges have been filed. The special disclosure rules are available in the public reading areas of the Commission. Under sections 706 and 709, case files involved in the administrative process of the Commission are not available to the public.

(e) Each executed statistical reporting form required under part 1602 of this chapter, such as Employer Information Report EEO-1, etc., relating to a particular employer is exempt from disclosure to the public prior to the institution of a proceeding under title VII involving information from such form.

(f) Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) explicitly adopts the powers, remedies, and procedures set forth in sections 706 and 709 of title VII. Accordingly, the prohibitions on disclosure contained in sections 706 and 709 of title VII as outlined in paragraphs (b), (c), (d), and (e)



of this section, apply with equal force to requests for information related to charges and executed statistical reporting forms filed with the Commission under the Americans with Disabilities Act.

(g) Requests for information relating to open case files covering alleged violations of the Equal Pay Act (29 U.S.C. 206(b)) or the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*) will ordinarily be denied under the seventh exemption of the Freedom of Information Act as investigatory records compiled for law enforcement purposes.

(h) The medical, financial, and personnel files of employees of the Commission are exempt from disclosure to the public.

[40 FR 8171, Feb. 26, 1975, as amended at 45 FR 40605, June 16, 1980; 56 FR 29579, June 28, 1991]

**§ 1610.18 Information to be disclosed.**

The Commission will provide the following information to the public:

(a) The Commission will make available for inspection and copying certain tabulations of aggregate industry, area, and other statistics derived from the Commission's reporting programs authorized by section 709(c) of title VII, provide that such tabulations: Were previously compiled by the Commission and are available in documentary form; comprise an aggregation of data from not less than three responding entities; and, do not reveal the identity of an individual or dominant entity in a particular industry or area;

(b) All blank forms used by the Commission;

(c) Subject to the restrictions and procedures set forth in § 1610.19, all signed contracts, final bids on all signed contracts, and agreements between the Commission and State or local agencies charged with the administration of State or local fair employment practices laws;

(d) All final reports that do not contain statutorily confidential material in a recognizable form;

(e) All agency correspondence to members of the public, Members of Congress, or other persons not government employees or special government employees, except those containing in-

formation that would produce an invasion of privacy if made public;

(f) All administrative staff manuals and instructions to staff that affect members of the public unless the materials are promptly published and copies offered for sale; and

(g) All final votes of each Commissioner, for every Commission meeting, except for votes pertaining to filing suit against respondents until such litigation is commenced.

[56 FR 29579, June 28, 1991]

**§ 1610.19 Predisclosure notification procedures for confidential commercial information.**

(a) *In general.* Commercial information provided to the Commission shall not be disclosed except in accordance with this section. For the purposes of this section, the following definitions apply:

(1) *Confidential commercial information* refers to records provided by a submitter containing information that is arguably exempt from disclosure under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* refers to any person or entity who provides confidential commercial information to the government. The term includes, but is not limited to, corporations, State governments, and foreign governments.

(b) *Notice to submitter.* Except as provided in paragraph (g) of this section, the Commission shall provide a submitter with explicit notice of a FOIA request for confidential commercial records whenever:

(1) The Commission reasonably believes that disclosure could cause substantial competitive harm to the submitter;

(2) The information was submitted prior to January 1, 1988, the records are less than 10 years old, and the submitter designated them as commercially sensitive; or

(3) The information was submitted after January 1, 1988, and the submitter previously, in good faith, designated the records as confidential commercial information. Such designations shall:

(i) Whenever possible, include a statement or certification from an officer or authorized representative of the

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company that the information is in fact confidential commercial information and has not been disclosed to the public; and

(ii) Expire ten years from the date of submission unless otherwise justified.

(c) *Notice to requester.* When notice is given to a submitter under this section, the requester shall be notified that notice and opportunity to comment are being provided to the submitter.

(d) *Opportunity of submitter to object.* When notification is made pursuant to paragraph (b) of this section, the Commission shall afford the submitter a minimum of five working days to provide it with a detailed statement of objections to disclosure. Such statement shall provide precise identification of the exempted information, and the basis for claiming it as a trade secret or as confidential information pursuant to 5 U.S.C. 552(b)(4), the disclosure of which is likely to cause substantial harm to the submitter's competitive position.

(e) *Notice of intent to disclose.* (1) The Commission shall consider carefully the objections of a submitter provided pursuant to paragraph (d) of this section. When the Commission decides to disclose information despite such objections, it shall provide the submitter with a written statement briefly explaining why the objections were not sustained. Such statement shall be provided a minimum of three working days prior to the specified disclosure date, in order that the submitter may seek a court injunction to prevent release of the records if it so chooses.

(2) When a submitter is notified pursuant to paragraph (e)(1) of this section, notice of the Commission's final disclosure determination and proposed release date shall also be provided to the requester.

(f) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Commission shall promptly notify the submitter of the legal action.

(g) *Exceptions to the notice requirement.* The notice requirements of this section shall not apply if:

(1) The Commission determines that the information shall not be disclosed;

(2) The information is published or otherwise officially available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

[56 FR 29579, June 28, 1991]

### § 1610.20 Deletion of exempted matters.

Where requested records contain matters which are exempted under 5 U.S.C. 552(b) but which matters are reasonably segregable from the remainder of the records, they shall be disclosed by the Commission with deletions. To each such record the Commission shall attach a written justification for making deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

[40 FR 8171, Feb. 26, 1975. Redesignated at 56 FR 29579, June 28, 1991]

### § 1610.21 Annual report.

The Legal Counsel shall, on or before March 1, 1975, and annually thereafter, submit a Freedom of Information Act report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate. The report shall include those matters required by 5 U.S.C. 552 (d).

[40 FR 8171, Feb. 26, 1985, as amended at 47 FR 46275, Oct. 18, 1982. Redesignated at 56 FR 29579, June 28, 1991]

## Subpart B—Production in Response to Subpenas or Demands of Courts or Other Authorities

### § 1610.30 Purpose and scope.

This subpart contains the regulations of the Commission concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a "demand") of a court or other authority is issued for the production or disclosure of (a) any material contained in the files of the Commission; (b) any information relating to material contained in the files of the Commission; or (c) any information or material acquired by any

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person while such person was an employee of the Commission as a part of the performance of his official duties or because of his official status.

[32 FR 16261, Nov. 29, 1967]

### **§ 1610.32 Production prohibited unless approved by the Legal Counsel.**

No employee or former employee of the Commission shall, in response to a demand of a court or other authority, produce any material contained in the files of the Commission or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without the prior approval of the Legal Counsel.

[32 FR 16261, Nov. 29, 1967, as amended at 47 FR 46275, Oct. 18, 1982]

### **§ 1610.34 Procedure in the event of a demand for production or disclosure.**

(a) Whenever a demand is made upon an employee or former employee of the Commission for the production of material or the disclosure of information described in § 1610.30, he shall immediately notify the Legal Counsel. If possible, the Legal Counsel shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before instructions from the Legal Counsel are received, an attorney designated for that purpose by the Commission shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the Legal Counsel. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Legal Counsel.

[32 FR 16261, Nov. 29, 1967, as amended at 47 FR 46275, Oct. 18, 1982]

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### **§ 1610.36 Procedure in the event of an adverse ruling.**

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 1610.34(b) pending receipt of instructions from the Legal Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Legal Counsel not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand (United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951)).

[32 FR 16261, Nov. 29, 1967, as amended at 47 FR 46275, Oct. 18, 1982]

## **PART 1611—PRIVACY ACT REGULATIONS**

### **Sec.**

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1611.2 Definitions.

1611.3 Procedures for requests pertaining to individual records in a record system.

1611.4 Times, places, and requirements for identification of individuals making requests.

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1611.7 Request for correction or amendment to record.

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1611.11 Fees.

1611.12 Penalties.

1611.13 Specific exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 42 FR 7949, Feb. 8, 1977, unless otherwise noted.

### **§ 1611.1 Purpose and scope.**

This part contains the regulations of the Equal Employment Opportunity Commission (the Commission) implementing the Privacy Act of 1974, 5 U.S.C. 552a. It sets forth the basic responsibilities of the Commission under the Privacy Act (the Act) and offers guidance to members of the public who